

whether, in case he should be summoned as a witness, he would be obliged to lose his pay during his absence from the yard for this purpose and have the time consumed thereby charged against his leave of absence with pay allowed by law to such employees, and, if not, what compensation he would be entitled to receive for attendance upon the court as a witness.

In reply I have the honor to state that if said employee is ordered by competent authority to attend and testify before the court of inquiry, and he should do so, I am of opinion that he would be entitled to his actual expenses while going to and returning from and while in attendance upon said court, and that his compensation as such per diem employee while necessarily absent from his place of employment while attending the court and while going to and returning from the place of trial should be allowed him, and not the per diem of \$1.50 allowed witnesses generally by section 848, Revised Statutes. It follows that the time while so necessarily absent from his place of employment should not be charged against his annual leave allowed by law to employees of his class.

It may be added in this connection that being a Government employee, he would be entitled only to his actual expenses of travel, as provided by the act of March 3, 1875 (18 Stat., 452.)

PAYMENT FOR AN ABSTRACT OF TITLE FOR LAND NOT PURCHASED AS A SITE FOR A PUBLIC BUILDING.

The provisions in the act of March 2, 1889, that in the procurement of titles to sites for public buildings the Attorney-General shall require the grantors to furnish all required abstracts of title, etc., free of expense, does not apply to land purchased for improving Bayou Plaquemine, Louisiana, which was not purchased as a site for a public building.

(Assistant Comptroller Mitchell to the Secretary of War, October 9, 1901.)

I have received your letter of August 27, 1901, inclosing a letter from Lieut. E. M. Adams, Corps of Engineers, U. S. A., in which he incloses an account in favor of Joseph A. Grace, clerk and recorder, Iberville Parish, La., for prepar-

ing an abstract of title and a certificate of mortgage, and for recording a deed and furnishing revenue stamps in connection with the purchase of a piece of land at Devils Elbow by the United States in connection with the engineer operations for improving Bayou Plaquemine, Louisiana, for which work the land was purchased.

You ask whether said account may be paid from the appropriation for "Improving Bayou Plaquemine, Louisiana."

No question as to the service or the charges is raised; and your doubt in the matter appears to be whether the charges should be borne by the War Department or the Department of Justice, or perhaps whether they should not be borne by the vendor of the land.

The facts of the case are thus stated by Lieutenant Adams:

"I submit herewith an account in favor of Joseph A. Grace, clerk and recorder, Iberville Parish, La., for preparing abstract of title, certificate of mortgage, recording deed, and furnishing revenue stamps in connection with the purchase of a piece of land at Devils Elbow by the United States, and request your decision as to whether the account may be paid by me from the funds for "Improving Bayou Plaquemine, Louisiana," for which work the land was purchased.

"The facts in the case are: The vendors offered to sell the land to the United States for \$500. On May 7, 1900, Major H. M. Adams, Corps of Engineers, asked that the Department of Justice instruct the United States attorney for the eastern district of Louisiana to examine the title. The district attorney examined the title and ordered from the parish recorder an abstract of the title and certificate of mortgages, which were furnished. The act of sale was passed and recorded March 8, 1901, as charged for, and the revenue stamps were furnished at that time. Payment of the purchase price of the land was made March 8, 1901.

"In his letter to the Attorney-General forwarding the title papers, the district attorney, adverting to the fact that the vendors were to receive \$500 *net* for the land, stated: 'It will be proper, therefore, for the Government, probably through Major Adams, to pay the expenses of the act of sale and the necessary certificates which I have procured and the stamp required upon the deed.' The Attorney-General in approving the title stated that when duly executed and stamped, as required by the internal-revenue law, such act of sale would pass a valid title.

"Mr. Grace's bill was recently referred to me by the district attorney for payment."

Section 355, Revised Statutes, provides:

"No public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be to such purchase has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively."

The act of March 2, 1889 (25 Stat., 941), contains the following provision:

"That hereafter all legal services connected with the procurement of titles to site for public buildings, other than for life-saving stations and pier-head lights, shall be rendered by United States district attorneys. *Provided further*, That hereafter, in the procurement of sites for such public buildings, it shall be the duty of the Attorney-General to require of the grantors in each case to furnish, free of all expenses to the Government, all requisite abstracts, official certifications, and evidences of title that the Attorney-General may deem necessary."

The above provision in the act of March 2 is found in "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety, and for other purposes," immediately following a number of specific appropriations for the erection, completion, repair, or protection of certain public buildings therein specifically named.

The act of April 24, 1888 (25 Stat. 94), provides—

"That the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right of way, or material needed

to enable him to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided, however*, That when the owner of such land, right of way, or material shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase the same at such price without further delay: *And provided further*, That the Secretary of War is hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works."

The act of March 3, 1901, "making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and two, and for other purposes" (31 Stat. 1170), contains the following:

"Improving Bayou Plaquemine, Louisiana: For completing improvement, two hundred and ten thousand dollars."

This improvement is made through and is under the control of the War Department. It is not understood that the land in question was purchased as a site for the erection of a public building thereon, but that it was purchased for the work of improving said bayou, and that it was a part of the contract of purchase thereof that the vendor was to receive \$500 net therefor, and that in the exercise of the discretion and judgment of the War Department it was necessary to incur said expenses in connection with the purchase of said land and the making of said improvement.

If the facts are as above stated, and the account is otherwise correct and is approved by you, I am of opinion that it may be paid from the appropriation "Improving Bayou Plaquemine, Louisiana."

DISTRICT ATTORNEY OF THE DISTRICT OF ALASKA.

Alaska is a "Territory of the United States" within the meaning of the act of May 1, 1876, and the district attorney of the district of Alaska is an officer of the Territory.

The district attorney of the district of Alaska does not become entitled to the salary of the office until he enters "upon the duties of such office in such Territory."